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**From:** Nelson, Leverett [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=2229A07C2CB442B182332D9DCC325F13-LNELSON]  
**Sent:** 11/6/2017 8:21:18 PM  
**To:** Wester, Barbara [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=cea2b9b4c21e414495bc675184a5291b-Bewester]; Pallesen, Reginald A. [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=368d3b434e30423cbddd2e249043c016-RPallese]  
**CC:** Klassman, Debra [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=e49e3a7e2efa47ac8ee2d6faa750605e-DKlassma]; Lupton, Jane [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=18726fe1300f4a23bf90d5f7c1648096-JLupton]  
**Subject:** FW: [New] Menominee Tribe Takes Action to Protect Its Namesake River

# Attorney Client / Ex. 5

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**From:** Kate Sarna [<mailto:KSARNA@earthjustice.org>]  
**Sent:** Monday, November 06, 2017 12:07 PM  
**To:** Richmond, Todd <[TRichmond@ap.org](mailto:TRichmond@ap.org)>  
**Subject:** [New] Menominee Tribe Takes Action to Protect Its Namesake River

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 Nov. 6, 2017

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### **Menominee Tribe Takes Action to Protect Its Namesake River**

#### *Lawsuit Aims to Ensure Clean Water Act Protections for Regionally and Nationally Important Waters*

Keshena, Wis. — Today, the Menominee Indian Tribe of Wisconsin (“Tribe”), represented by Earthjustice, gave legal notice of intent to pursue federal litigation, to ensure that the health of the Menominee River and portions of the Tribe’s ancestral homeland and sacred sites won’t be jeopardized by a large mine on the banks of the Menominee River on the Wisconsin-Michigan border.

The 60-Day Notice of Intent to Sue under the Clean Water Act outlines violations of federal agency duties under the Act that will affect water quality of the Menominee River and adjacent wetlands, and downstream to Green Bay, as a result of the Back Forty Mine Project.

The Back Forty project is an open-pit mine and minerals-processing facility proposed by Aquila Resources, Inc. The site borders the Menominee River and is located within a Menominee cultural landscape that includes tribal burial grounds, ancient agricultural sites and ceremonial sites of cultural significance to the Menominee Tribe.

The Tribe continues to share its concerns in a variety of forums, starting in 2015 with a formal resolution in opposition to the Back Forty Mine; and most recently, in a letter to the U.S. Environmental Protection Agency (“EPA”) and U.S. Army Corps of Engineers (“Corps”) demanding that the Corps and EPA exercise federal authority over Clean Water Act permitting decisions involving the river and adjacent wetlands.

“The Tribe has made our opposition known to the company, the investors, the state and federal governments—yet our concerns have been ignored thus far,” said Menominee Tribal Chairman Gary Besaw. “This 60-Day Notice puts the federal government on notice that we expect meaningful consultation and federal regulatory agency action on this important issue. If we continue to be ignored and the agencies fail in their duties, we are prepared to pursue federal litigation.”

What’s at stake? The proposed mine pit is no more than 50 yards from the Menominee River, which flows into Green Bay in Lake Michigan. The pit would span 84 acres and be 750 feet deep under current plans, stretching far beneath the river’s natural waterline and affecting hydrology throughout the area. In addition, the complex

includes a huge processing plant, two large holding ponds for hazardous mine waste and substantial slag piles of overburden from the mining process.

This massive undertaking is an unacceptable risk to the region's wetlands and waters. The Great Lakes represent more than 20 percent of the world's fresh surface water, and 95 percent of the fresh surface water in the United States, with millions of people relying on these waters—commercially, and for drinking water, from tiny towns to cities like Chicago. At least seven counties in the region—including the host county of the Back Forty project—have passed resolutions opposing the mine development.

Further, the proposed mine site has invaluable historic and cultural significance to the Menominee Tribe, which has deep ties to the river that bears the Tribe's name.

“Our Tribe's creation story began at the mouth of the Menominee River thousands of years ago,” said Besaw. “Our ancestors' history and indeed, their very remains are enshrined in the landscape that the Back Forty project will destroy. But this is about more than just our Tribe. A project of this magnitude will affect other tribes, multiple states, local fishermen, downstream communities, wildlife—and ultimately, the health of the Great Lakes. The risks for all are simply too great.”

Why take this action? Aquila Resources, Inc., requires four permits to proceed with the Back Forty project. The Michigan Dept. of Environmental Quality (“MDEQ”) granted two permits in December 2016, and a third in April 2017. The Tribe and a local landowner have challenged the MDEQ Mining Permit through the Michigan administrative appeal process.

The outcome of a final permit application is the focus of today's notice and potential legal challenge. It is a Section 404 wetlands permit, which is necessary under the Clean Water Act because the Back Forty Mining Project would authorize dredging or filling wetlands.

The Tribe contends the Corps has the responsibility for overseeing this process. Instead, the Corps and EPA have stepped back, allowing the State of Michigan to exercise regulatory control over the Section 404 permit application—in violation of the Clean Water Act, according to Earthjustice attorney Janette Brimmer.

“The Clean Water Act makes it very clear that the authority to dig up and potentially pollute the Menominee River and its wetlands cannot be delegated down to a single state,” Brimmer explained. “The Menominee River is a commercially-navigable interstate waterway and a significant tributary to our nation's Great Lakes. That makes the Clean Water Act permitting process at issue here a federal responsibility—the waters and wetlands that will be affected by this huge, potentially very damaging industrial project do not ‘belong’ only to the State of Michigan. They must be protected for everyone, and it's the EPA and the Corps' mandatory duty to assume jurisdiction over the permit application.”

The Tribe's concerns include the federal agencies ignoring their federal trust and treaty responsibilities to the Tribe and, in effect, allowing the project to skirt key cultural and environmental-protection steps in the permitting process, when they should be providing critical oversight for a project this large with such great potential risks to public health and the environment.

What happens now? The Corps and EPA have 60 days to respond to the notice. The Tribe remains willing to listen and share information, and expects its concerns to be taken seriously.

**[Read the release online](#)**

**[Read the legal document](#)**

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to preserve magnificent places and wildlife, to advance clean energy,  
and to combat climate change.  
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